

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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THE HOME BINGO NETWORK,

Plaintiff,

v.

1:05-cv-0608

MULTIMEDIA GAMES, INC., and  
MIAMI TRIBE OF OKLAHOMA BUSINESS  
DEVELOPMENT AUTHORITY,

Defendants.

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THOMAS J. McAVOY  
Senior United States District Judge

**DECISION and ORDER**

**I. INTRODUCTION**

Plaintiff The Home Bingo Network commenced the instant action against Defendants Multimedia Games, Inc. and Miami Tribe of Oklahoma Business Development Authority asserting a claim of patent infringement. Currently before the Court is Defendant Miami Tribe of Oklahoma Business Development Authority's ("MBDA") motion to dismiss pursuant to Rule 12(b)(1) on the ground of lack of subject matter jurisdiction. More specifically, the MBDA claims that it is an arm of an Indian tribe and, therefore, is entitled to sovereign immunity.

**II. STANDARD OF REVIEW**

"On a motion invoking sovereign immunity to dismiss for lack of subject matter jurisdiction, the plaintiff bears the burden of proving by a preponderance of evidence that

jurisdiction exists.” Chayoon v. Chao, 355 F.3d 141, 143 (2d Cir. 2004) (quoting Garcia v. Akwesasne Hous. Auth., 268 F.3d 76, 84 (2d Cir. 2001)).

### III. DISCUSSION

As the Second Circuit has explained:

Indian tribes enjoy the same immunity from suit enjoyed by sovereign powers and are “subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.” Kiowa Tribe of Okla. v. Mfg. Techs., Inc., 523 U.S. 751, 754, 118 S. Ct. 1700, 140 L. Ed.2d 981 (1998). “To abrogate tribal immunity, Congress must ‘unequivocally’ express that purpose,” and “to relinquish its immunity, a tribe’s waiver must be ‘clear.’” C & L Enters., Inc. v. Citizen Band Potawatomi Indian Tribe of Okla., 532 U.S. 411, 418, 121 S. Ct. 1589, 149 L. Ed.2d 623 (2001) (citations omitted).

Chayoon, 355 F.3d at 143.

The Miami Tribe of Oklahoma is a federally recognized tribe. See U.S. Dep’t of Interior, Tribal Leaders Directory (Spring/Summer 2005);<sup>1</sup> see also 67 Fed. Reg. 46328, 46330 (July 12, 2002). The Internal Revenue Service and the Department of the Interior have opined that the MBDA is a subdivision of the Miami Tribe of Oklahoma. See Def.’s Exs. B, C. The United States District Court for the Northern District of Oklahoma has held that the MBDA qualifies as “an arm of the Miami tribal government and possesses attributes of tribal sovereignty that preclude suit against it absent a waiver of immunity.” Multimedia Games, Inc. v. WLGC Acquisition Corp., 214 F. Supp.2d 1131, 1135 (N.D. Okl. 2001). Moreover, upon review of the tribal law creating the authority, see Def.’s Ex. A, it is clear that the MBDA is an arm of the tribe. Accordingly, absent waiver, the MBDA is entitled to immunity. This is true regardless of whether the MBDA may have been engaging in activity off the reservation

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<sup>1</sup> The directory may be found at: <http://www.doi.gov/leaders.pdf>

or whether the activity is commercial in nature. Bassett v. Mashantucket Pequot Tribe, 204 F.3d 343, 357 (2d Cir. 2000).

Turning to the issue of waiver, Plaintiff points to no authority that Congress has expressly waived tribal immunity with respect to the enforcement of patents. See id. (finding no waiver of tribal immunity in Copyright Act). Plaintiff cites to Tribe Ordinance § 302(c) as evidence of an express waiver. Section 302(c) provides for a waiver of immunity for suits “in the Court of another jurisdiction in its own name upon any contract or obligation arising out of its activities in such other jurisdiction.” Section 302(c) specifically states that any “subordinate economic enterprise” or “political subdivision” of the Miami Tribe waives its immunity “only to the extent of the specific terms of the applicable contract or obligation.” Plaintiff’s Complaint does not seek to hold the MBDA liable on a contract or obligation arising out of its activities in New York. In fact, Plaintiff fails to identify any contract or obligation the terms of which expressly waive immunity. Thus, there is no basis for finding an express waiver.

In lieu of dismissal, Plaintiff requests limited discovery on the issue of sovereign immunity. Plaintiff seeks discovery concerning the existence of any contracts in which the MBDA may have waived immunity or the relationship of certain individuals to the MBDA. The Court finds that no such discovery is appropriate. Plaintiff has failed to establish a colorable argument that the MBDA does not enjoy immunity. The existence of any contracts are irrelevant inasmuch as this action does not arise out of the breach of, or any obligation under, a contract. If such a contract exists between MBDA and Plaintiff, then Plaintiff should be familiar with it without the need to resort to discovery. The relationship of any individuals to MBDA also is irrelevant. The only defendant at issue is MBDA. If Plaintiff believes that

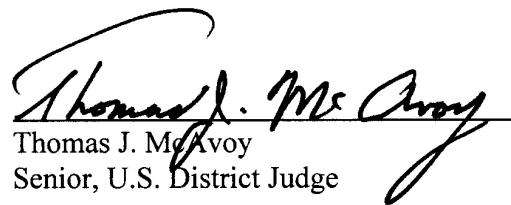
certain individuals may have engaged in wrongful conduct, then Plaintiff may sue those individuals.

**IV. CONCLUSION**

For the foregoing reasons, Defendant Miami Tribe of Oklahoma Business Development Authority's motion to dismiss is GRANTED and Plaintiff's request for discovery on the issue of subject matter jurisdiction is DENIED.

IT IS SO ORDERED.

Dated: August 30, 2005



Thomas J. McAvoy  
Senior, U.S. District Judge